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13 USAA CASUALTY INSURANCE COMPANY

14 UNITED STATES DISTRICT COURT  
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
16 WESTERN DIVISION

17 SUSAN SEYSTER, an individual; and  
18 JONATHAN SEYSTER, an individual,

19 Plaintiffs,

20 v.

21 United Services Automobile Association,  
22 a Texas Corporation; USAA  
23 CASUALTY INSURANCE COMPANY,  
24 a Texas Corporation, and DOES 1  
25 through 50, inclusive,

26 Defendants.

CASE NO. 2:19-CV-01042-DMG-JDE

**DEFENDANT USAA CASUALTY  
INSURANCE COMPANY'S  
NOTICE OF MOTION AND  
MOTION FOR SUMMARY  
JUDGMENT, OR IN THE  
ALTERNATIVE, PARTIAL  
SUMMARY JUDGMENT**

**Hearing Date:** November 22, 2019  
**Hearing Time:** 2:00 p.m.  
**Department:** 8C  
**Judge:** Hon. Dolly M. Gee  
**Cmplt. Filed:** February 13, 2018

1 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

2 **NOTICE IS HEREBY GIVEN** that on November 22, 2019 or as soon  
3  
4 thereafter as counsel may be heard by the above-entitled court located at United  
5 States Courthouse, 350 West 1st Street, Los Angeles, CA 90012 in Courtroom 8C on  
6 the 8th Floor, Defendant USAA Casualty Insurance Company (“USAA CIC”) will,  
7  
8 and hereby does, move for Summary Judgment, or in the alternative, Partial  
9 Summary Judgment under the Federal Rules of Civil Procedure Rule 56 as follows:

10 1. USAA CIC is entitled to summary judgment on the grounds that  
11  
12 Plaintiffs’ first cause of action for breach of contract, second cause of action for  
13 breach of the covenant of good faith and fair dealing, and the third cause of action for  
14 unfair business practices, and claim for punitive damages fail as a matter of law  
15 because the uncontroverted facts establish that the customized, post-market  
16 modifications made to Plaintiffs’ vehicle do not fall within the coverage provided by  
17 the insurance policy issued by USAA CIC and USAA CIC paid all monies owed to  
18 Plaintiffs for the damage to the non-modified aspects of Plaintiffs’ vehicle and for  
19 rental reimbursement and storage fees.

22 2. In alternative, USAA CIC is entitled to partial summary judgment of  
23  
24 Plaintiffs’ first cause of action for breach of contract because the uncontroverted facts  
25 establish that the customized, post-market modifications made to Plaintiffs’ vehicle  
26 do not fall within the coverage provided by Plaintiffs’ insurance policy issued by  
27 USAA CIC and USAA CIC paid all monies owed to Plaintiffs for the damage to the  
28

1 non-modified aspects of Plaintiffs' vehicle and paid the limits of the automobile  
2 rental reimbursement coverage. By accepting the \$29,157.37 paid by USAA CIC,  
3 Plaintiffs have waived any claim to the alleged benefits they claim are owed.  
4

5 3. In the alternative, USAA CIC is entitled to partial summary judgment of  
6 Plaintiffs' second cause of action for breach of the implied covenant of good faith  
7 and fair dealing because the uncontroverted facts establish that USAA CIC conducted  
8 a reasonable and prompt investigation of Plaintiffs' claim, and Plaintiffs are not  
9 entitled to additional benefits because all benefits owed under Plaintiffs' insurance  
10 policy were paid by USAA CIC. USAA CIC overpaid the claim by including the  
11 market value of equipment that did not fall within the coverage provided by the  
12 Policy, and there is no coverage by estoppel under California law.  
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15 4. In the alternative, USAA CIC is entitled to partial summary judgment of  
16 Plaintiffs' second cause of action for breach of the implied covenant of good faith  
17 and fair dealing because the uncontroverted facts establish that USAA CIC and  
18 Plaintiffs had a genuine dispute as to the valuation of the subject vehicle, and the  
19 Genuine Dispute Doctrine precludes any further recovery.  
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22 5. In the alternative, USAA CIC is entitled to partial summary judgment of  
23 Plaintiffs' third cause of action for unlawful or unfair business practices because  
24 USAA CIC did not act unlawfully or unfairly in its handling of the claim, and there  
25 can be no damages by a private plaintiff under California law.  
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1 Dated: October 25, 2019

DKM LAW GROUP, LLP

2  
3 By /s/Joshua N. Kastan

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8 COMPANY